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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 BEN DANIELS,

11 Petitioner.

12 v.

13 DERRAL G. ADAMS, Warden,

14 Respondent.
15

No. C 09-0388 MMC (PR)

**ORDER OF DISMISSAL;
GRANTING LEAVE TO PROCEED
IN FORMA PAUPERIS**

(Docket No. 2)

16 On January 28, 2009, petitioner, a California prisoner proceeding pro se, filed the
17 above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner
18 challenges the validity of his guilty plea, entered January 15, 2008 in the Santa Clara County
19 Superior Court. Petitioner seeks leave to proceed in forma pauperis.

20 Prisoners in state custody who wish to challenge collaterally in federal habeas
21 proceedings either the fact or length of their confinement are first required to exhaust state
22 judicial remedies, either on direct appeal or through collateral proceedings, by presenting the
23 highest state court available with a fair opportunity to rule on the merits of each and every
24 claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c), Rose v. Lundy, 455
25 U.S. 509, 515-16 (1982). The exhaustion-of-state-remedies doctrine reflects a policy of
26 federal-state comity to give the state “an initial opportunity to pass upon and correct alleged
27 violations of its prisoners federal rights.” Picard v. Connor, 404 U.S. 270, 275 (1971)
28 (quotation and citation omitted). If available state remedies have not been exhausted as to all

1 claims raised in a federal habeas corpus petition, the district court must dismiss the petition.
2 See Rose, 455 U.S. at 510. A dismissal solely for failure to exhaust is not a bar to a
3 petitioner's returning to federal court after exhausting available state remedies. See Trimble
4 v. City of Santa Rosa, 49 F.3d 583, 586 (9th Cir. 1995).

5 In the instant case, petitioner states in his petition that he is challenging his conviction
6 on the grounds that counsel provided ineffective assistance by advising petitioner to plead
7 guilty and petitioner's prosecution was in violation of the Double Jeopardy Clause. Other
8 information in the petition and attachments thereto, however, shows that such claims were
9 not exhausted in state court. Rather, the only claim petitioner has presented to the California
10 Supreme Court is the one he raised in the sole state habeas corpus petition he filed in that
11 court, specifically, his claim that the trial court wrongly refused to grant petitioner credit for
12 the time he spent in jail prior to being sentenced. The California Supreme Court summarily
13 denied that petition on December 10, 2008.

14 Before petitioner may, by way of federal habeas corpus, raise claims challenging the
15 validity of his plea, he must present such claims in the state courts, including the Supreme
16 Court of California. As petitioner has not presented his ineffective assistance of counsel and
17 double jeopardy claims to the highest state court, he has not exhausted his state remedies.
18 Accordingly, the instant petition is hereby DISMISSED. Such dismissal is without prejudice
19 to petitioner's filing a new federal habeas petition once he has exhausted his state remedies
20 by presenting his claims to the highest state court.


21 In light of petitioner's lack of funds, the application to proceed in forma pauperis is
22 hereby GRANTED.

23 This order terminates Docket No. 2.

24 The Clerk shall close the file.

25 IT IS SO ORDERED.

26 DATED: July 17, 2009

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28 MAXINE M. CHESNEY
United States District Judge